

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

AVKO EDUCATIONAL RESEARCH
FOUNDATION, a Michigan
Corporation, and DONALD J.
MCCABE, author,
Plaintiffs,
v.

Case No.: 1:11-cv-13381-TLL-CEB

Hon: Thomas L. Ludington

THOMAS A. MORROW, an individual,
WAVE 3 LEARNING, INC.; HOME
SCHOOL HOLDINGS, INC., and HOME
SCHOOL, INC;
Defendants.

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and Donald J. McCabe, author
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**COUNTER-DEFENDANTS AVKO EDUCATIONAL RESEARCH
FOUNDATION, INC. AND DONALD J. MCCABE'S MOTION FOR SUMMARY
JUDGMENT**

Counter-Defendants AVKO Educational Research Foundation, Inc. (AVKO) and Donald J. McCabe (McCabe) by and through their attorney Susan Payne Woodrow state the following as a Motion for Summary Judgment.

1. Counter-Defendants hereby move for summary judgment pursuant to Fed. R. Civ. P. 56 and/or 12(b)(6) for failure to state a claim upon which relief can be granted as to all counts of Counter-Plaintiff's Complaint because no genuine issues of material fact remain for trial, because judgment in favor of Counter-Defendants is proper as a matter of law or because Counter-Defendants' counter-complaint fails to state sufficient facts or elements to support any claims for relief.

2. Counter-Defendants are entitled to summary judgment as a matter of law on all of the counts listed in Counter-Plaintiffs' Complaint because no genuine evidence has or can be produced to substantiate their complaints. Counter-Plaintiff's have only Morrow's words and memories to present with no corroborating witnesses. Counter-Defendants have evidence (Exhibits A through GG) that demonstrate Counter-Plaintiff Morrow's lack of credibility, e.g., lies told by him to the Court, to the SEC, to the Bankruptcy Court, and in his Separation Agreement with HSH.

3. Counter-Plaintiff's claims for fraud in the inducement must also fail because they are not supported by the law or the facts.

4. Counter-Defendants rely on the attached Brief in Support of their Motion for Summary Judgment.

5. Counter-Defendants rely on the Court's previous ruling that a license to reproduce and distribute "the Works" had been granted to Wave 3 Learning, Inc. based upon the pertinent particulars of the June 4, 2010 agreement which called for a total payment of \$600,000.00 none of which was paid by Wave 3 Learning.

WHEREFORE, Counter-Defendants pray this Court dismisses with prejudice Counter-Plaintiffs entire cross complaint, find all pending motions moot, and award costs and attorney's fees.

Respectfully submitted this day, September 4, 2013.

/s/Susan Payne Woodrow
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